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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 383

RUTH F. BARLOW, WILLIAM B. CAMPBELL,
WILLIAM M. BRENN, ET AL.,
Appellants,

vs.

THE A. P. SMITH MANUFACTURING COMPANY

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW JERSEY

STATEMENT AS TO JURISDICTION

ADOLF A. BERLE, JR.,
Counsel for Appellant.

RUDOLF P. BERLE,
ROBERT H. SEABOLT,
EDWARD K. MORENTHAL,
Of Counsel.

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SUPREME COURT OF NEW JERSEY

DOCKET NO. C-1274-51

THE A. P. SMITH MANUFACTURING COMPANY,
Plaintiff-Respondent,

vs.

RUTH F. BARLOW, WILLIAM B. CAMPBELL, WILLIAM M. BRENN, EUGENE M. SMITH AND JOSEPH P. HALPIN, INDIVIDUALLY AND AS REPRESENTATIVES OF THE HOLDERS OF THE PREFERRED AND COMMON SHARES OF THE A. P. SMITH MANUFACTURING COMPANY,
Defendants-Appellants,

and

THEODORE D. PARSONS, ATTORNEY GENERAL OF NEW JERSEY,
Defendant-Respondent

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, defendants-appellants submit herewith their statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the Supreme Court of New Jersey entered in this cause.

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Opinion Below

The opinion of the Superior Court of New Jersey, Chancery Division, Essex County, is reported in 26 N. J. Super. 106, 97 A. (2d) 186. The opinion of the Supreme Court of New Jersey is reported at 98 A. (2d) 581, (not yet officially reported).

Statement

Plaintiff-respondent (hereinafter referred to as the Corporation) was incorporated March 13, 1896 under the laws of New Jersey to engage in the business of manufacturing and selling water works equipment and related products. It is engaged solely in the business of manufacturing and selling valves and miscellaneous water work supplies and in certain related businesses. Its principal office and plant is located in East Orange, New Jersey.

On July 24, 1951, the Corporation's Board of Directors adopted the following resolution:

> "Whereas it appears that there is a growing recognition that corporations which in their own capacities enjoy many of the benefits of citizenship are under an obligation, greater in times of prosperity, to assume their part of the burdens of citizenship, one such burden being the support of voluntary charity, including the privately supported universities and colleges; and
>
> "Whereas it appears that in order to maintain, over a period of time, the conditions under which corporations in general and this corporation in particular can exist and do business for profit, it is necessary that understanding of the benefits to the nation flowing from private enterprise and corporate organization be continued and if possible broadened and strengthened; and
>
> "Whereas it appears that fundamental to such understanding is a knowledge of history, government, economics and kindred subjects; and

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"Whereas it appears that Princeton University is one of the most, if not the most important center of such teaching in the State of New Jersey; and

"Whereas it appears that Princeton University is facing a progressively widening gap between the income from its endowment and the budgetary needs of its present program, before taking into consideration needs for expansion and development; and

"Whereas it appears that through a moderate gift to Princeton University this corporation may assume its share of the aforementioned burdens of citizenship and thus gain the present benefit of public recognition of its existence within the civic and social as well as within the legal and economic structure of society.

"Now therefore, it is resolved:

"(1) that it is in the best interests of this corporation that it join with others in the 1951 Annual Giving to Princeton University, to the extent of a contribution of $1,500.00 toward the maintenance of the university.

"(2) that the sum of $1,500.00 is hereby appropriated for that purpose, to be transmitted by the treasurer of this corporation to Princeton University."

Princeton University is not a stockholder of the Corporation, nor is the Corporation in any way connected or affiliated with Princeton University except that Herbert F. O'Brien, the Corporation's president, is an alumnus of Princeton University. The evidence shows that the Corporation did not derive or expect to derive any direct benefit from the contribution; that the benefit, if any, would be merely a public benefit.

Following the adoption of this resolution, defendant Barlow, through counsel, notified the Corporation that she objected to the above contribution and asked that the resolution authorizing it be rescinded on the grounds that it would constitute the expenditure of corporate funds for a purpose foreign to the objects of the Corporation and would, therefore, be a misapplication of such funds.

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The By-Laws of the Corporation provide that:

> "The Board of Directors shall have the management of the business of the Company and may exercise all such powers and do all such things as may be lawfully exercised or done by the Corporation, subject to the provisions of the statute, of the Certificate of Incorporation, and of these By-Laws."

Neither the Laws of New Jersey in force on the date of incorporation nor the Certificate of Incorporation or By-Laws contain any provision authorizing, directly or by implication, gifts for charitable, educational or scientific purposes by the Corporation.

In 1930 the Legislature of New Jersey enacted a statute (L. 1930, c. 105; L. 1931, c. 290; R. S. 14:3-13; See Appendix A) providing that any Corporation that cooperates with other corporations and natural persons in the creation and maintenance of community funds of charitable, philanthropic or benevolent instrumentalities conducive to public welfare could for such purposes spend such corporate sums as the Directors "deem expedient and as in their judgment will contribute to the protection of the corporation's interests." Donations in excess of 1% of the capital stock require ten (10) days notice to stockholders and approval at a stockholders meeting if written objections be made by the holders of more than 25% of the stock. In 1949, the statute was amended to increase the limitation to 1% of capital and surplus (L. 1949, c. 171). In 1950, a new statute was enacted (L. 1950, c. 220; R. S. 14:3-13.1; See Appendix A) declaring it to be the public policy of the State and in furtherance of the public interest and welfare that encouragement be given to the maintenance of institutions engaged in community fund, charitable, philanthropic, scientific or benevolent activities or patriotic or civic activities conducive to the betterment of social and

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economic conditions, and empowered corporations to make contributions to such institutions provded the donee institution does not own more than 10% of the voting stock of the donor corporation and provided further that the contribution shall not exceed 1% of capital and surplus unless the Corporation is authorized by the stockholders at a regular or special meeting. Concededly, the gift in question complies with the provisions of these statutes.

Because of the fact that the Courts of New Jersey had never adjudicated whether either of these statutes can be applicable to a corporation organized prior to their enactment or whether the application of the statutes to such a corporation is prohibited by Article I Section 10 of the Constitution of the United States prohibiting the passage by any state of any law impairing the obligation of contract or by Section I of the Fourteenth Amendment providing that no state shall deprive any person of life, liberty, or property without due process of law, or by similar provisions of the New Jersey Constitution, the Corporation withheld payment of the contribution and commenced an action for a declaratory judgment in the Superior Court of New Jersey, Essex County, against the defendants-appellants herein as representatives of the holders of the preferred and common shares of the Corporation.

Alleging that the constitutionality of the above mentioned New Jersey statutes has not been passed upon, the Corporation prays for a judgment declaring that the contribution was within the power of the Corporation acting by its Board of Directors and was not a misapplication of corporate funds due to lack of power of the Corporation to make such contributions. The answer of the defendants-appellants admits in substance all of the allegations of the complaint and alleges that the New Jersey statutes, having been enacted subsequent to the incorporation

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of the plaintiff, are not a part of the contract between the Corporation and its stockholders and that the application of the statutes to the plaintiff are in violation of Article I, Section 10 and the Fourteenth Amendment of the Constitution of the United States.

The Attorney General of New Jersey became a party to the action and filed an answer as the representative of the public interest in the controversy.

After a trial the Superior Court found that the charitable contributions statute does not deprive the stockholders of the Corporation of any vested property interest and granted a declaratory judgment in favor of the Corporation. Because of the public importance of the issues involved, the appeal to the Appellate Division was certified directly to the Supreme Court of New Jersey, which affirmed the judgment.

Jurisdiction

The judgment of the Supreme Court of New Jersey was entered on June 25, 1953. A petition for appeal is presented to the United States Supreme Court herewith, to wit, on September 22, 1953. The jurisdiction of the Supreme Court to review this decision by appeal is conferred by Title 28, U. S. Code, Section 1257 (2). *Mobile & Ohio Railroad* v. *Tennessee*, 153 U. S. 486 (1894); *Louisiana Railway & Navigation Company* v. *New Orleans*, 235 U. S. 164 (1914); *McCollough* v. *Virginia*, 172 U. S. 102 (1898); *Detroit United Railway* v. *Michigan*, 242 U. S. 238 (1916); *Irving Trust Co.* v. *Day*, 314 U. S. 556 (1942); *Atlantic Coast Line Railroad Co.* v. *Phillips*, 332 U. S. 168 (1947).

The constitutionality of the New Jersey statutes in question was raised in the amended complaint (R 9a), denied in the answer of defendants-appellants (R 16-17a), and asserted in the answer of the Attorney General of New Jersey (R 19a). It was stipulated by the parties in the

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pre-trial order of the Superior Court that the Courts of New Jersey have not adjudicated whether "the application of said statutes to the Corporation is prohibited (i) by Article 1 Section 10 of the Constitution of the United States prohibiting the passage by any State of any Law impairing the Obligation of Contracts, or (ii) by Section 1 of the Fourteenth Amendment thereto providing that no State shall deprive any person of life, liberty or property without due process of the law * * *" (R 30a).

The Superior Court in its opinion affirmed the Constitutionality of the New Jersey statutes holding:

> "Nor do the acts in question offend against Article 1 Section 10 of the Federal Constitution * * * Nor does the Legislation in question offend the Fourteenth Amendment of the Federal Constitution." (See annexed opinion of Superior Court pp. 18, 19).

The Supreme Court of New Jersey affirmed, holding that:

> "We are entirely satisfied that within the orbit of above authorities the legislative enactments found in R. S. 14:3-13 and R. S. 14:3-13.1 et seq. and applied to pre-existing corporations do not violate any constitutional guarantees afforded to their stockholders."

The judgment adjudicates that the statutes are "valid and constitutional" (R 2-3a).

Assignment of Errors

The Supreme Court of New Jersey erred:

1. In holding that Chapter 105 of the New Jersey Laws of 1930, as amended by Chapter 290 of the Laws of 1931 (Revised Statutes 14:3-13) and further amended by Chapter 171 of the Laws of 1949, and Chapter 220 of the Laws of 1950 (N.J.S.A. 14:3-13.1 through 13.4) are applicable to corporations created before their passage.

2. In holding that the power to make contributions to academic institutions is incidental to the proper objects of a corporation, over the objection of a stockholder, in the absence of authority contained in such corporation's charter of pre-existing statutory authority.

3. In failing to hold that Chapter 105 of the New Jersey Laws of 1930, as amended by Chapter 290 of the Laws of 1931 (Revised Statutes 14:3-13) and further amended by Chapter 171 of the Laws of 1949, and Chapter 220 of the Laws of 1950 (N.J.S.A. 14:3-13.1 through 13.4) are in violation of Article I, Section 10 of the Constitution of the United States prohibiting the enactment by any State of any law impairing the obligation of contracts.

4. In failing to hold that Chapter 105 of the New Jersey Laws of 1930, as amended by Chapter 290 of the Laws of 1931 (Revised Statutes 14:3-13) and further amended by Chapter 171 of the Laws of 1949, and Chapter 220 of the Laws of 1950 (N.J.S.A. 14:3-13.1 through 13.4) are in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States providing that no State shall deprive any person of life, liberty or property without due process of law.

Statutes Involved

Chapter 105 of the New Jersey Laws of 1930, as amended by Chapter 290 of the Laws of 1931 (Revised Statutes 14:3-13) and further amended by Chapter 171 of the Laws of 1949, and Chapter 220 of the Laws of 1950 (N.J.S.A. 14:3-13.1 through 13.3) are set forth in Appendix A hereto.

The Questions Are Substantial

1. The trial Judge opened his opinion with these words:

> "This controversy presents questions of transcendent importance, the solution of which is not without considerable difficulty."

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The importance of the controversy lies in the fact that it squarely raises the question of the constitutionality of state statutes authorizing private corporations to make gifts of corporate funds to privately endowed institutions of a charitable, educational or scientific nature. The solution of this question must vitally affect not only the future of most privately endowed institutions, but also the concept and function of the private corporation in a free economy.

The difficulty of the question lies in reconciling the social policy behind the statutes with the constitutional protection afforded stockholders against impairment of their contractual rights under the corporate charter. Neither social policy nor public benefit can justify a denial of the fundamental principles that directors must manage the affairs of the Corporation as trustees for the stockholders who own it, and that a contractual obligation exists to apply corporate funds only to objects authorized by the corporate charter. A denial of these principles would strike at the very basis of our economic system of private corporate industry.

Twenty-nine states have adopted charitable contributions statutes similar in general to the New Jersey statute in question. The issues involved in this appeal, therefore, are of great importance not only to corporations and stockholders throughout the nation but also to nearly all charitable, scientific, and educational institutions which rely on private contributions for support. The importance of this case is shown by the fact that Princeton University filed a brief as *amicus curiae* and its President testified at the trial to the importance of corporate financial support. In addition, Frank W. Abrams, Chairman of Standard Oil Company of New Jersey, and Irving S. Olds, former chairman of United States Steel Corporation, testified to the

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changing concepts of corporate management and outlook. The question involved, therefore, clearly transcends the comparatively small corporate donation involved.

2. The issues involved on this appeal have not previously been considered by the United States Supreme Court. Nor, as far as appellants are aware, has the validity of any state statute permitting charitable contributions been tested in any court in the United States. Until the Constitutional issues raised by this appeal are determined by the ultimate judicial authority, the power of corporations, at least those already in existence at the time such laws become effective, to make charitable donations will remain in doubt. Similarly, stockholders are entitled to be informed of the purposes for which their investment may be legally employed. Actual and potential distributees of such corporate beneficence also profess a vital interest.

3. The opinion of the New Jersey Supreme Court expressly and by necessary implication gives effect to the corporate contributions statutes which were enacted long after the Corporation was organized. Neither the corporate charter nor any other corporate contract authorized donations of the character here involved. The ultimate question is whether the legislative sanction of such gifts may validly be applied to a corporation in existence prior to the enactment of the statutes. The New Jersey Supreme Court construed the tripartite corporate contract beween the State, the Corporation and the stockholders to permit such gifts under the common law. Appellants contend that giving effect to the statutes not only impairs the Corporation's contractual obligation to them as stockholders but also alters the obligations of the stockholders among themselves. The terms of the corporate contract depend on local common law.

4. It is a well established common law principle that

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gifts by corporations organized to conduct business for profit are *ultra vires*. Directors may not divert funds from business purposes in order to make contributions for the public benefit or welfare, however worthy or humanitarian their motives may be, unless it can be shown that a direct benefit to the corporation will result. e. g., *Dodge* v. *Ford Motor Co.*, 204 Mich. 459, 170 N. W. 668 (1919); *Hutton* v. *West Cork Ry. Co.*, 23 Ch. D. 654, 673 (1883); "Charity has not business to sit at boards of directors qua charity."; Dodd, *For Whom Are Corporate Managers Trustees?*, 45 Harvard Law Review 1145, 1157-1161 (1932); Cousens, *How Far Corporations May Contribute To Charity*, 35 Virginia Law Review 401 (1949); 6A Fletcher Cyclopedia Corporations, § 2940, (Revised edition 1950); Ballantine, Corporations, § 85 (Revised edition 1946); Note, 52 Harvard Law Review 538 (1939), where doubt is expressed that statutes authorizing charitable contributions may constitutionally be applied to pre-existing corporations.

5. The Corporation does not claim any direct and proximate benefit from the gift to Princeton. It has no connection with the University, other than that it happens to be in the same state. The opinion of the New Jersey Supreme Court relies only on indirect, speculative benefits and asserts the maxim that the common law must adapt itself to changing conditions. It is submitted that conditions have not changed to such an extent as to justify corporate directors in making gifts of funds belonging to stockholders for purposes having no direct and reasonable relation to the business of the corporation. The implications of such a holding go a long way toward overturning the traditional legal relationship of stockholders to corporations. Mr. Irving Olds, who testified as an expert for the Corporation, recognized in a speech delivered in

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New Haven in 1951 that "many state laws cast grave doubt upon the right of a corporation to donate the money of its stockholders unless the probability of immediate and direct benefit to the donor is clearly demonstrable." Quoted in *de Capriles and Garrett, Legality of Corporate Support to Education*, 38 A. B. A. J. 209, 210 (1952).

6. Unquestionably, corporate gifts to privately supported academic institutions were not permitted in 1896, when the corporate contract came into existence. The reserved power of the state to alter and amend the corporate charter affects only the relations of the State to the Corporation and does not extend to the obligations of the Corporation to its stockholders, *Zabriskie* v. *The Hackensack & N. Y. R. R. Co.*, 18 N. J. Eq. 178 (1867). In any case, vested property rights may not be constitutionally disturbed under the reserved power. *Coombes* v. *Getz*, 285 U. S. 434 (1932).

7. Although the opinion below is based to some extent upon an interpretation of New Jersey common law, it necessarily gives effect to the New Jersey statutes permitting gifts by corporations. The United States Supreme Court is not bound by a state court's determination on the existence and interpretation of contracts, where it is claimed that a state statute impairs an existing contract.

> "It is well settled that the decision of a state court holding that, as a matter of construction, a particular charter or a charter provision does not constitute a contract, is not binding on this court. The question of the existence or non-existence of a contract in cases like the present is one which this court will determine for itself, the established rule being that where the judgment of the highest court of a State, by its terms or necessary operation, gives effect to some provisions of the state law which is claimed by the unsuccessful party to impair the contract set out and relied on, this court has jurisdiction to determine the question whether such a contract exists as claimed, and whether the state

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law complained of impairs its obligation." *Mobile & Ohio Railroad Co.* v. *Tennessee*, 153 U. S. 486, 492, 493 (1894).

"It is too well settled to be open to further debate, that where this Court is called upon in the exercise of its jurisdiction to decide whether state legislation impairs the obligation of a contract, we are required to determine upon our independent judgment these questions: (1) Was there a contract? (2) If so, what obligation arose from it and (3) Has that obligation been impaired by subsequent legislation?" *Detroit United Railway* v. *Michigan*, 242 U. S. 238, 249 (1916).

Where state courts justify an impairment of contract by applying a general rule of law, the Supreme Court recognizes its "duty to inquire whether the justification is well grounded." *Given* v. *Wright*, 117 U. S. 648, 656 (1886).

To the same effect are *Appleby* v. *City of New York*, 271 U. S. 364 (1926); *Irving Trust Co.* v. *Day*, 314 U. S. 556 (1942); *Atlantic Coast Line R. Co.* v. *Phillips*, 332 U. S. 168 (1947).

8. The opinion emphasizes the reliance of private charitable and educational institutions upon corporate funds. A real issue is presented whether the need of such institutions can justify corporate contributions in which stockholders do not acquiesce. As to stockholders of corporations existing prior to the enactment of such permissive laws, a serious question of deprivation of property in violation of the due process clause of the Fourteenth Amendment exists. Defendants claim a vested property right in the assets of the corporation. If public interest requires corporate donations to private charitable and educational institutions so as to cloak such gifts with the character of a public use, the state must resort to its power of eminent domain against non-consenting stockholders. See *Louisville Joint Stock Land Bank* v. *Radford*, 295 U. S. 555, 601,

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602 (1935). Whatever the need of such institutions for corporate support, appellants deny that a state can change an existing contract so as to permit monies rightfully belonging to them to be contributed without their consent. It is fundamental that directors of corporations stand in a fiduciary position in their relations with the corporation and its stockholders. They are often referred to as quasi-trustees, e. g., *Whitfield* v. *Kern*, 122 N. J. Eq. 332, 341, 192 A. 48, 53 (E. & A., 1937). Clearly, a statute authorizing a trustee to make contributions out of a *trust res* would be in violation of the contract impairment and due process clauses of the Constitution if construed so as to apply to trusts in existence prior to the passage of the statute.

It is submitted that the decision of the New Jersey Supreme Court is in error in that it fails to interpret the corporate contract correctly in the light of existing law and authority and in giving effect to the New Jersey statutes so as to permit a corporate donation to a privately financed university without any direct benefit to the donor, over the objection of minority stockholders. The questions presented by this appeal are substantial and uniformly recognized by all concerned as being of great public importance. We believe the Federal questions raised are neither trivial nor frivolous.

Respectfully submitted,

ADOLF A. BERLE, JR.,
Counsel for Defendants-Appellants.

Of Counsel:
RUDOLF P. BERLE,
ROBERT H. SEABOLT,
EDWARD K. ROSENTHAL.

APPENDIX "A"

R. S. 14:3-13, AN ACT RELATIVE TO CORPORATIONS[1]

"Any corporation, organized under any laws of this state whatsoever, may co-operate with other corporations and with natural persons in the creation and maintenance of community funds or of charitable, philanthropic or benevolent instrumentalities conducive to public welfare, and its directors or trustees may appropriate and expend for those purposes such sum or sums as they deem expedient and as in their judgment will contribute to the protection of the corporate interests.

"When, however, in case of a corporation having capital stock, the expenditures for those purposes in any calendar year shall in the aggregate amount to one per centum (1%) of the capital (stock outstanding) *and surplus as of the end of the preceding year*, then before any further expenditure is made during the year for those purposes by the corporation, ten days' notice shall be given to the stockholders in the manner the directors or trustees direct, of the intention to make the further expenditure, specifying the amount thereof, and if written objections be made by the stockholders holding twenty-five per centum (25%) or more of the stock of the corporation the further expenditure shall not be made until it has been authorized at a stockholders' meeting."

N. J. S. A. 14:3-13.1 Through 13.3.[1]

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[1] Laws of 1930, Chapter 105, P. L. p. 353, as amended by Laws of 1931, Chapter 290, p. 724, and by Laws of 1949, Chapter 171, P. L. p. 560, making verbal changes here immaterial except for the deletion of the words (stock outstanding) and the addition of the words *and surplus as of the end of the preceding year.* Adopted by unanimous vote of both houses.

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AN ACT EMPOWERING CORPORATIONS ORGANIZED UNDER THE LAWS OF THIS STATE TO APPROPRIATE, SPEND OR CONTRIBUTE MONEY FOR THE CREATION OR MAINTENANCE OF INSTITUTIONS OR ORGANIZATIONS ENGAGED IN COMMUNITY FUND, HOSPITAL, CHARITABLE, PHILANTHROPIC, EDUCATIONAL, SCIENTIFIC OR BENEVOLENT ACTIVITIES OR PATRIOTIC OR CIVIL ACTIVITIES CONDUCIVE TO THE BETTERMENT OF SOCIAL AND ECONOMIC CONDITIONS.

"§ 1. The Legislature declares that it shall be the public policy of this State that encouragement shall be given to the creation and maintenance of institutions or organizations engaged in community fund, hospital, charitable, philanthropic, educational, scientific or benevolent activities or patriotic or civic activities conducive to the betterment of social and economic conditions; that such a policy will be in the public interest in that the public welfare will be thereby promoted; and that to the end that the public policy herein declared may be supported and furthered, corporations organized under the laws of this State should be specifically empowered to appropriate, spend or contribute such sum or sums as in the judgment of their respective governing boards will conduce to the betterment of social and economic conditions, thereby permitting such corporations, as creatures of this State, to discharge their obligations to society while, at the same time, reaping the benefits which essentially accrue to them through public recognition of their existence within the economic and social, as well as within the legal, structure of society.

"§ 2. Every domestic corporation organized under the laws of this State, unless otherwise provided in its certificate of incorporation or other certificate filed pursuant to law or its by-laws, shall have power to aid, singly or in co-operation with other corporations and with natural persons, in the creation or maintenance of institutions or organizations engaged in community fund, hospital, charitable, philanthropic, educational, scientific or benevolent activities or patriotic or civic activities conducive to the betterment of social and economic conditions, and the members of the board of trustees or directors or other governing board of such corporation may appropriate, spend or contribute for such purposes such reasonable sum or sums as they may

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determine; *provided*, that a contribution shall not be authorized hereunder if at the time of the contribution or immediately thereafter the donee institution shall own more than ten per centum (10%) of the voting stock of the donor corporation or one of its subsidiaries; *and provided further*, that in the case of a corporation having capital stock, contributions in any fiscal year shall not in the aggregate exceed one per centum (1%) of the capital and surplus as of the end of the preceding fiscal year, unless any contribution or contributions in excess of one per centum (1%) of such capital and surplus shall be authorized by the stockholders of the corporation at a regular or special meeting.

"§ 3. The provisions of this act shall not be construed as directly or indirectly minimizing or interpreting the rights and powers of corporations, as heretofore existing, with reference to appropriations, expenditures or contributions of the nature above specified.[2]

APPENDIX "B"

SUPERIOR COURT OF NEW JERSEY, CHANCERY DIVISION, ESSEX COUNTY

Docket No. C-1274-51

THE A. P. SMITH MANUFACTURING COMPANY, *Plaintiff*,

v.

RUTH F. BARLOW, et al., *Defendants*

OPINION—May 19, 1953

Appearances:

Messrs. Pitney, Hardin & Ward (Mr. Waldron M. Ward and Mr. Charles R. Hardin, Jr. appearing).

Mr. Robert P. Weil, of the New York Bar, *pro hac vice*, for plaintiff.

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[2] Laws of 1950, Chap. 220, P. L. p. 553. Adopted by unanimous vote of both houses.

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Messrs. Stryker, Tams & Horner (Mr. Josiah Stryker appearing) for defendants, except the Attorney General.

Mr. Theodore D. Parsons (Mr. Thomas P. Cook appearing) for the Attorney General of New Jersey.

Messrs. Jackson, Nash, Brophy, Barringer & Brooks (Mr. Williamson Pell, Jr., appearing) *amicus curiae*.

STEIN, *J. S. C.*:

This controversy presents questions of transcendent importance, the solution of which is not without considerable difficulty. The court is pleased to acknowledge that its task was appreciably lightened by the distinguished contribution made by all opposing counsel, whose excellent arguments, written and oral, revealed exhaustive research and exceptional skill. The court itself is sensible of the fact that although the matter in dispute cannot be regarded as *res nova*, yet in this State there has been no judicial pronouncement on the validity of the State legislation here involved, enactments upon which the plaintiff relies in its quest for a favorable declaratory judgment and which legislation the defendants condemn as unconstitutional insofar as that legislation is sought to be applied to the plaintiff company. While the contest here relates to a very modest donation, $1500.00, made by the directors of the plaintiff company, a large and prosperous corporation, to Princeton University for the latter's general educational purposes, the questions thereby provoked and here presented are of great public interest and very materially touch the public welfare. Stripped to its simplest form the question calling for decision is whether a New Jersey corporation, organized in 1896 to engage in industry for purposes of profit, may lawfully in 1951 donate from its funds for the general maintenance of an educational institution like Princeton University, private in nature, in the sense that it is privately supported, it being an institution where learning is advanced by the teaching of learned languages, the liberal arts and sciences, architecture, engineering, and political science. The plaintiff company, speaking through its directors, answers this question affirmatively and seeks justification in two Acts of our legislature, one being R. S. 14:3-13, Laws of

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1930, ch. 105, P. L. p. 353, as amended by the Laws of 1931, ch. 290, p. 724, and the Laws of 1949, ch. 171, P. L. p. 560, and the other being N. J. S. A. 14:3-13.1 through 13.3, Laws of 1950, ch. 220, P. L. p. 553, adopted by the unanimous vote of both Houses. Since the 1950 Act did not repeal the 1930 Act and its amendments, and the two are not repugnant to one another, their provisions should be considered together. The earlier Act permits corporations organized in this State to cooperate with other corporations and with natural persons in the creation and maintenance of community funds "or of charitable, philanthropic or benevolent instrumentalities conducive to public welfare," and their directors and trustees are permitted to expend for such purposes such sums as they deem expedient and "as in their judgment will contribute to the protection of the corporate interests." The Act imposes the limitation that if such expenditures in any calendar year amount in the aggregate to one percent of the capital and surplus of the company as of the end of the preceding year, then before any further like expenditure is made during the current year, ten days' notice must be given to the stockholders of the intention to make the further expenditure, specifying the amount thereof, with the further limitation that if stockholders holding 25% or more of the stock of the company object, such further expenditure shall not be made unless and until authorized at a stockholders' meeting. It will be observed that that Act does not contain within its express language any reference to institutions or organizations engaged in educational or scientific activities or any civic activities conducive to the betterment of social and economic conditions. Such omitted specification does appear in the 1950 Act. In that later enactment the Legislative declared it to be "the public policy of this State that encouragement shall be given to the creation and maintenance of institutions or organizations engaged in * * * educational, scientific or benevolent activities or patriotic or civic activities conducive to the betterment of social and economic conditions; that such a policy will be in the public interest in that the public welfare will be thereby promoted." The Act further declares it to be a part of the said public policy that corporations organized

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under the laws of this State should be specifically empowered to contribute such moneys as in the judgment of the governing boards "will conduce to the betterment of social and economic conditions, thereby permitting such corporations, as creatures of this State, to discharge their obligations to society while, at the same time, reaping the benefits which essentially accrue to them through public recognition of their existence within the economic and social, as well as within the legal, structure of society." The Act then grants to every domestic corporation in New Jersey the permissive power of making such contributions as are mentioned in the aforesaid declaration of public policy. Limitations are, however, imposed upon this granted power of contribution. No such contribution may be made if at the time of the making thereof, or immediately thereafter, the recipient institution owns more than 10% of the voting stock of the donor corporation or of one of its subsidiaries. A further proviso is that a corporation having capital stock may not in any fiscal year contribute more than one percent of its capital and surplus as of the end of its preceding fiscal year, unless the excess contribution is authorized by the stockholders at a meeting. The Act expressly preserves all existing rights and powers of companies with reference to appropriations, expenditures or contributions of like nature. Thus the ten-day notice requirement and the 25% stock objection provision contained in the 1930 Act are preserved and continue to govern contributions made under the 1950 Act.

Now as to the particular facts upon which the court is asked to consider the legislation aforementioned. The facts are not in dispute. The only evidence before the court is that adduced by the plaintiff. The defendants offered no proof. Thus the process of arriving at a decision is here considerably eased. Many of the facts testified to in this case by leaders of American industry and by front-line educators are matters of such common, almost universal, familiarity that the court might well have taken judicial notice of them. It needs no proof that the universities and colleges of the land are eleemosynary institutions. Colleges were so characterized by Lord Mansfield in *St. John's*

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College, Cambridge v. *Todington*, 1 Burr. 200, and by Chief Justice Marshall in the ever-famous *Dartmouth College* case, 4 Wheat. 518 (1819). At Princeton, as at most American universities and colleges, the tuition paid for instruction meets only fractionally the per capita cost of the education furnished. Not only that, but a large segment of the student body is assisted by scholarships and by direct financial aid from the school's treasury. So widespread has been for many years this policy of aid to the needy student that it cannot in truth be said that any deserving youth of ambition and promise cannot obtain at some American university or college that aid, in whole or in part, necessary to put him through an undergraduate career and even a post-graduate course. Unlike the system of higher education in other countries, the tremendous growth and expansion over the years of the American universities and colleges have created and furnished to the youth of the land the broadest of opportunity for instruction and development in the area of advanced learning in arts and pure and applied science and in the field of economics and government. It is from the millions of young men and women who are the products of higher American education that industry has picked, and will have need to pick, its scientists and its business executives. It is the youth of today which also furnishes tomorrow's leaders in economics and in government, thereby erecting a strong breastwork against any onslaught from hostile forces which would change our way of life either in respect of private enterprise or democratic self-government. The proofs before me are abundant that Princeton emphasizes by precept and indoctrination the principles which are very vital to the preservation of our own democratic system of business and government, particularly vital at this time when alien ideologies seek to impose themselves upon our habits and our dreams for the future. I cannot conceive of any greater benefit to corporations in this country than to build, and continue to build, respect for and adherence to a system of free enterprise and democratic government, the serious impairment of either of which may well spell the destruction of all corporate enterprise. Nothing that aids or promotes the growth and service of the Ameri-

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can university or college in respect of the matters here discussed can possibly be anything short of direct benefit to every corporation in the land. The college-trained men and women are a ready reservoir from which industry may draw to satisfy its need for scientific or executive talent. It is no answer to say that a company is not so benefited unless such need is immediate. A long-range view must be taken of the matter. A small company today might be under no imperative requirement to engage the services of a research chemist or other scientist, but its growth in a few years may be such that it must have available an ample pool from which it may obtain the needed service. It must also be remembered that industry cannot function efficiently or enjoy development and expansion unless it have at all times the advantage of enlightened leadership and direction. The value of that kind of service depends in great measure upon the training, ideologies and character of the personnel available. All of these considerations must lead the reflecting mind to the conclusion that nothing conducive to public welfare, other than perhaps public safety, is more important than the preservation of the privately supported institutions of learning which embrace in their enrollment about half the college-attending youth of the country. Even public safety depends heavily upon the educated mind; witness what scientific research at Princeton and elsewhere was able to accomplish in discovering and making of practical utilization what had since the beginning of time been the mystery of the atom. Princeton is preeminent in its encouragement of the searching mind both in science and in public affairs. Its preservation is indeed of first importance to the welfare of the State.

The court was furnished with proofs that Princeton, like most other privately supported institutions of higher education, is presently facing a serious threat, if not to its very existence then certainly to the extent of its public usefulness. High taxation against individual incomes and inflationary living costs have dried up the sources which heretofore nourished and sustained the school's activities. The school's budgetary deficits are mounting and are assuming threatening proportions. To turn to the State for help

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carries with it a certain decided disadvantage. The award of State funds is a matter of political administration. Such grants certainly present the hazard of political interference or control. The experience of the University of Louisiana, a state university, can hardly be forgotten. That school for a time became a political football, a condition hardly to be courted. I am strongly persuaded by the evidence that the only hope for the survival of the privately supported American college and university lies in the willingness of corporate wealth to furnish in moderation some support to institutions which are so essential to public welfare and thereof, of necessity, to corporate welfare. What promotes the general good inescapably advances the corporate weal. I hold that corporate contributions to Princeton and institutions rendering the like public service are, if held within reasonable limitations, a matter of direct benefit to the giving corporations, and this without regard to the extent or sweep of the donors' business. The benefits derived from such contributions are nationwide and promote the welfare of everyone anywhere in the land.

On July 24, 1951, plaintiff's board of directors adopted the following resolution:

> "Whereas it appears that there is a growing recognition that corporations which in their own capacities enjoy many of the benefits of citizenship are under an obligation, greater in times of prosperity, to assume their part of the burdens of citizenship, one such burden being the support of voluntary charity, including the privately supported universities and colleges; and
>
> "Whereas it appears that in order to maintain, over a period of time, the conditions under which corporations in general and this corporation in particular can exist and do business for profit, it is necessary that understanding of the benefits to the nation flowing from private enterprise and corporate organization be continued and if possible broadened and strengthened; and
>
> "Whereas it appears that fundamental to such understanding is a knowledge of history, government, economics and kindred subjects; and

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"Whereas it appears that Princeton University is one of the most, if not the most important center of teaching in the State of New Jersey; and

"Whereas it appears that Princeton University is facing a progressively widening gap between the income from its endowment and the budgetary needs of its present program, before taking into consideration needs for expansion and development; and

"Whereas it appears that through a moderate gift to Princeton University this corporation may assume its share of the aforementioned burdens of citizenship and thus gain the present benefit of public recognition of its existence within the civic and social as well as within the legal and economic structure of society.

"Now therefore, it is resolved:

"(1) that it is in the best interests of this corporation that it join with others in the 1951 Annual Giving to Princeton University, to the extent of a contribution of $1,500.00 toward the maintenance of the university;

"(2) that the sum of $1,500.00 is hereby appropriated for that purpose, to be transmitted by the treasurer of this corporation to Princeton University."

It should be noted that the plaintiff company was incorporated in 1896 under the Corporation Act of 1875, as amended. Its stated object was to engage in the business of manufacturing and selling water works equipment and related products. It maintains plants in East Orange and in Bloomfield, New Jersey, where it manufactures valves, fire hydrants, special machinery and equipment, mainly for the water and gas industries of the country. It also sells its products to customers in foreign countries. It has been in business continuously since the time of its incorporation. The defendants, who object to the aforementioned resolution passed by the company's directors, contend that the $1500.00 contribution to Princeton, granted though not yet paid, is *ultra vires*, since there is no power in the charter of the company to make such contribution as the resolution calls for. They argue that the company may not use any of its corporate funds except in furtherance of its business

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needs, and only for the purpose of creating profit for its stockholders. They take the further position that since the corporation's charter constitutes a *tripartite* contract, one between the State and the company, between the company and its stockholders, and, lastly, between the stockholders *inter sese*, it is not within the power of the legislature to alter or impair that contract by the enabling or permissive legislation consisting of the 1930 and 1950 Acts, above mentioned. They insist that if those statutes, or either of them, are so construed as to be made applicable to the proposed contribution to Princeton, those statutes, as so construed and applied, would violate Article 1, Sec. 10 of the Constitution of the United States, prohibiting the enactment by any State of any law impairing the obligation of contracts, and also Sec. 1 of the Fourteenth Amendment of the Constitution of the United States, which provides that no State shall deprive any person of life, liberty or property without due process of law. They further assert that those statutes, and each of them, if so construed and applied, would also violate Article 1, par. 1, of the Constitution of New Jersey by depriving the stockholders of the plaintiff company of their property rights in the assets of the company, and would also violate Article 1, par. 20, of the New Jersey Constitution, which provides that private property shall not be taken for public use without just compensation, and Article 4, Sec. VII, par. 3 of the State Constitution, which provides that the Legislature shall not pass any law impairing the obligation of contracts.

In the complaint the company asks judgment declaring that the contribution to Princeton was within the plaintiff's corporate powers and that said contribution was not and is not a misapplication of corporate funds due to any lack of power in the company to make the contribution. In their answer the defendants ask for a judgment declaring that the contribution would be a misapplication of corporate funds and an *ultra vires* act in violation of the property and contract rights of the defendants and of the other stockholders of the plaintiff company. Thus the issues of *ultra vires* and constitutionality are sharply drawn.

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First as to *ultra vires*. It is settled law here and in England that a corporation or association possesses not only those powers which are expressly conferred upon it by its charter, franchise or articles of association, but also all incidental powers reasonably designed or required to give fuller or greater effect to the expressed powers. An expressed power to a company to sell its wares does not require that with it there be also expressed the right to advertise its merchandise by the public press, radio, television, or any of the infinite variety of media of publicity and promotion. Such activity is a power present by necessary implication. So in respect of good-will. Anything that tends to promote with the public a company's good-will is a reasonable measure towards the corporate objective of earning profits. It is this philosophy which moved Congress to allow corporations to give up to 5% of their earnings to any established or recognized charity, educational institution (public or private), or other welfare oragnization. Contributions to such beneficiaries engenders respect and appreciation on the part of the general public and certainly places the giving corporation on a better platform of public esteem than the one who padlocks its treasury against appeals for the public good. Therefore, in a real sense the contribution here under consideration is one that would have a tendency to enlarge upon and improve that good-will which the plaintiff company already enjoys. Individuals who give to schools, hospitals, Red Cross, and the like enjoy far greater respect from their fellowmen than do those persons who tighten their purses against all appeals for such help. What is true as between individuals has undoubtedly the same impact between companies and between companies and individuals. There is also the broader question here involved, namely, that the contribution here in question is towards a cause which is intimately tied into the preservation of American business and the American way of life. Such giving may be called an incidental power, but when it is considered in its essential character, it may well be regarded as a major, though unwritten, corporate power. It is even more than that. In the court's view of the case it amounts to a solemn duty.

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This question must not be studied in the light of that earlier day when corporations were far fewer in number and had not developed in power and in influence to the point where the major part of the national wealth is owned by corporate entities. Nor must the matter be looked at through lenses which do not reflect conditions which did not exist 50 or 100 years ago: real, tangible threats to American business and American democracy. It is to the credit and the glory of the common law that it has always had within itself the seed of change, keeping pace with the march of the years and the advance of thought. Wherever it has lagged it has been because of a conservatism which was hesitant to recognize the changing times and the need to revise the law's precedents. But always and eventually the common law caught up with the times and molded itself to the newer needs for the public good. An example of this occurred in England. Exactly 70 years ago the English Court of Chancery said, "Charity has no business to sit at boards of directors," *Hutton* v. *West Cork Ry. Co.*, 23 Ch. D. 654, 673 (1883). Fifty years went by, with all the changes in industry that took place in that period, and the same court gave its judicial stamp of approval to a contribution of £100,000 voted by a chemical company to several English universities for "the furtherance of scientific education and research." See *Evans* v. *Brunner, Mond & Co., Ltd.*, L. R. (1921), 1 Ch. D. 359. This change in judicial perspective is ably discussed in a recent article entitled, "Corporation Support of Education: The Legal Basis," published in the February, 1952, issue of the American Bar Association Journal, Vol. 38, No. 2, page 119.

I know of no decisions in this State which are in conflict with the progressive thinking reflected by the decision in *Evans* v. *Brunner, Mond & Co., Ltd., supra.* If any such there are, they are probably of such old vintage that they should not be regarded as controlling in this day and age and under the conditions that now prevail and the particular circumstances which attend the problem calling for the court's decision in this case. Emancipation from earlier constricting attitudes and holdings is part of the process of judicial growth and public service. The application of

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this idea to expanding corporate power was pointedly expressed more than 50 years ago by the New York Supreme Court in *Steinway* v. *Steinway & Sons*, 40 N. Y. Supp. 718 (1896), where was said the following: "As industrial conditions change business methods must change with them and acts become permissible which at an earlier period would not have been considered to be within corporate power."

Now as to the constitutional question. The constitutional objections raised by the defendants under both Federal and State Constitutions are substantially alike. So considered they amount to the claim that the legislation here in question impairs the obligation of contracts, deprives the defendants of property without due process, and, finally, constitutes a taking of private property for public purposes but without compensation. I do not regard these objections as tenable. The granting of the charter by the State to the plaintiff company has at all times been subject to the reserved power of the State to alter, suspend or repeal the same, in the discretion of the Legislature. This reserve power has received in our decisions a broad construction, the important limitation being that a legislative enactment which has the effect of altering an ante-dating charter shall not run afoul of constitutional guarantees. In *Grausman* v. *Porto Rican-Am. Tobacco Co.*, 95 N. J. Eq. 155 (Ch. 1923), affirmed 95 N. J. Eq. 223 (E. & A., 1923), the court said (at p. 160): "However, it needs no argument or citation of authorities to prove that there is a disinclination to disturb legislative enactments unless their conflict with the organic law is apparent. It does seem to me, however, that the needs of commerce, as evidenced by the rapid adoption of the no-par stock idea, is something that may properly be taken into account unless it is clear that it does contravene the constitution, not in some fanciful or far-fetched manner, but substantially and in real effect." See *Bingham* v. *Savings Invest., &c., E. Orange*, 101 N. J. Eq. 413 (Ch. 1927), affirmed in 102 N. J. Eq. 302 (E. & A., 1928). In that case Vice Chancellor Backes, overruling constitutional objections voiced by stockholders, said: "The power of the state, however, under its reserve power, to alter or amend charters,

in respect of the contract created *between the state and the corporation*, is absolute, to protect the rights of the public, carry into effect the original purposes of the grant, and to promote the due administration of corporate affairs; and if, incidentally, injury to stockholders ensues, they must submit under their implied contract with the state to suffer it. The office of the reserve power, in our organic and statutory law, is to safeguard the public interest in corporate grants, which without the reservation would under the rule in the *Dartmouth College Case* be an irrevocable contract. Under the reservation, Justice Gray says, in *Inland Fisheries Commrs.* v. *Holyoke Water Power Co.*, 104 Mass. 446; 15 Wall 500, and it has been universally accepted as the true rule, the state is authorized to make any alteration or amendment in a charter granted subject to it, which will not defeat or substantially impair the object of the grant, or any rights which have vested under it, and that the legislature may deem necessary to secure either that object or other public or private rights * * *."

In the case of *In re Collins-Doan Co.*, 3 N. J. 382 (1949), the court held that the act of incorporation is not alone a contract between the company and the State but also one between the company and its stockholders and between the stockholders *inter se*. It was there said that a company is subject to all amendments which the Legislature may make to the General Corporation Act, that such amendments are a part of the charter of every company formed at any time, that the Corporation Act may be amended or repealed at the pleasure of the Legislature, and that every corporation is bound by such action and that the charter of every company is subject to alteration, suspension and repeal, in the discretion of the Legislature. It was further said in that case that those rights, so reserved, extend to the contract between the State and the corporation and that "the contractual rights of the stockholders *inter se* are not proof against 'alteration required by the public interest.'" That the legislation here under attack is a matter relating to the public interest and one realistically touching and affecting the public welfare, need be argued no further. The duty to serve and promote the public interest and common welfare

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provokes and sustains the exercise of the State's reserve power. Particularly is this true where, as in the instant case, the legislation "will not defeat or substantially impair the object of the grant." It cannot be earnestly suggested that the limited contribution allowed by the statutes in question "defeats or substantially impairs" the object of the grant of corporate power to the plaintiff. Even if it were assumed that the diversion of a corporate sum within the limits of the statutes does in some mathematical measure impair the rights of stockholders, it is not a *substantial* impairment within the quoted language from *Bingham* v. *Savings Invest., &c., E. Orange, supra.* Certainly it is not such diversion as defeats the State's sanction that the plaintiff company conduct its chartered business. I therefore hold that the Acts of the Legislature here under discussion are well within the reserve power of the State and that the exercise of that power is binding not alone upon the company but upon its stockholders in respect of their contract *inter se.*

Nor do the Acts in question offend against Article 1, Section 10 of the Federal Constitution. The Supreme Court of the United States has many times held that any act passed by a State under its reserve power does not impair the obligation of a charter contract. I refer only to the cases of *Miller* v. *The State*, 15 Wall. 478 (1873) and *Looker* v. *Maynard*, 179 U. S. 46 (1900), voting rights changed; *Greenwood* v. *Freight Co.*, 105 U. S. 13 (1881) charter repealed; *Polk* v. *Mutual Reserve Fund*, 207 U. S. 310 (1907), business change from cooperative and assessment life insurance to life insurance of every kind; *Stockholders* v. *Sterling*, 300 U. S. 175 (1937), bank stockholders' liability changed; *Veix* v. *Sixth Ward Assn.*, 310 U. S. 32 (1940), withdrawal rights of building and loan association stockholder changed.

The reserve power has been held to save from invalidity under the Contracts Clause other forms of corporate regulation much more burdensome than the New Jersey charitable contribution statutes. *Charles River Bridge* v. *Warren Bridge*, 11 Pet. 420 (1837), charter contract strictly construed; benefit of exclusive franchise not implied; competing

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franchise granted; *Holyoke Co.* v. *Lyman*, 15 Wall. 500 (1873), manufacturing company whose charter permitted it to dam river required to construct a fishway; *Shields* v. *Ohio*, 95 U. S. 319 (1877), *Spring Valley Water Works* v. *Schottler*, 110 U. S. 347 (1884), *Stanislaus County* v. *San Joaquin C. & I. Co.*, 192 U. S. 201 (1904), rate regulation imposed; *Fair Haven R. R. Co.* v. *New Haven*, 203 U. S. 379 (1906), trolley company required to pave streets; *International Bridge Co.* v. *New York*, 254 U. S. 126 (1920), bridge company required to supply additional facilities.

Nor does the legislation in question offend the Fourteenth Amendment of the Federal Constitution. State statutes passed pursuant to the reserve power have likewise been held not to operate as a deprivation of property without due process of law, even though more burdensome than the New Jersey charitable contribution statutes. *St. Louis, Iron Mountain Ry.* v. *Paul*, 173 U. S. 404 (1899), severance pay provisions imposed; *Erie R. R. Co.* v. *Williams*, 233 U. S. 685 (1914), semi-monthly wage payment required; *Sutton* v. *New Jersey*, 244 U. S. 258 (1917), street railway corporation required to carry police officers free of charge; *Marcus Brown Holding Co.* v. *Feldman*, 256 U. S. 170 (1921), emergency rent laws sustained; *Home B. & L. Assn.* v. *Blaisdell*, 290 U. S. 398 (1934), mortgage moratorium law sustained.

Finally, the legislation challenged in this case is clearly sustainable under the police power reserved to and residing in each State. "The police power of a state is an inherent attribute of its sovereignty with which it is endowed for the protection and general welfare of its citizens, and of which the state may not divest itself by contracts or otherwise." See 12 C. J. §603, p. 991, and *Boston Beer Co.* v. *Massachusetts*, 97 U. S. 25, 33 (1878), 24 L. ed. 989. In the last cited case Mr. Justice Bradley, speaking for the United States Supreme Court, said:

> "Whatever differences of opinion may exist as to the extent and boundaries of the police power, and however difficult it may be to render a satisfactory definition of it, there seems to be no doubt that it does extend to the protection of the lives, health and property of the

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> citizens, and to the preservation of good order and the public morals. The Legislature cannot, by any contract, divest itself of the power to provide for these objects. They belong emphatically to that class of objects which demand the application of the maxim, *Sales populi suprema lex;* and they are to be attained and provided for by such appropriate means as the legislative discretion may devise. That discretion can no more be bargained away than the power itself."

Every person joining a chartered corporate enterprise does so subject to the paramount police power of the State. "All contracts, whether made by the state itself, by municipal corporations, or by individuals, are subject to be interfered with, or otherwise affected by, subsequent statutes enacted in the bona fide exercise of the police power, and do not, by reason of the contracts clause of the constitution, enjoy any immunity from such legislation." See C. J. reference, *supra*. *Griffith* v. *Connecticut*, 218 U. S. 563 (U. S. Sup. 1910); *Hudson County Water Co.* v. *McCarter*, 209 U. S. 349 (U. S. Supp. 1908), affirming 70 N. J. Eq. 695 (E. & A. 1906). In the last cited case Justice Oliver Wendell Holmes expressed, with that genius which was his, the rule of and the limitation upon the police power reserved unto the several states. He said (p. 355 of the report):

> "All rights tend to declare themselves absolute to their logical extreme. Yet all in fact are limited by the neighborhood of principles of policy which are other than those on which the particular right is founded, and which become strong enough to hold their own when a certain point is reached. The limits set to property by other public interests present themselves as a branch of what is called the police power of the state. The boundary at which the conflicting interests balance cannot be determined by any general formula in advance, but points in the line, or helping to establish it, are fixed by decisions that this or that concrete case falls on the nearer or farther side. For instance, the police power may limit the height of buildings in a city, without compensation. To that extent it cuts down what otherwise

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would be the rights of property. But if it should attempt to limit the height so far as to make an ordinary building lot wholly useless, the rights of property would prevail over the other public interest, and the police power would fail. To set such a limit would need compensation and the power of eminent domain."

I have already indicated that the legislation which the defendants question is something which not alone substantially affects the public welfare but vitally concerns our national economy and our form of government. The Acts under attack were not passed under some guise. In the 1950 Act the Legislature in the clearest of language expressed and declared that the enactment was passed in the public interest and to promote the public welfare, so that there shall result a betterment in the social and economic conditions of our people. Ordinarily the declaration of policy by the Legislature is final, binding and conclusive upon the judicial branch of the government. Only when the declaration by the Legislature is illusory and is intended, by the cloak of police power, to mask some unreasonable or illegal purpose, may the court strike down such declarations of policy. There is no such infirmity in the Acts involved in the present litigation. The reasons and purposes declared by the Legislature are substantial and their factual validity is a matter of common recognition. I therefore hold that since those Acts are well within the police power of the State, no earlier act on the part of the State, such as the antecedent Corporation Act under which the plaintiff company was chartered, has or could have the effect of barring, in the constitutional sense, the two Acts in question.

Since the company and its stockholders acquired their contractual rights subject and subordinate to the reserve power of the State to alter that contract, and subject also to the paramount police power of the State, both the company and its stockholders must be held constructively to have acquiesced in the legislation of which they here complain. That being so, the defendants have no property interest in the maintenance and continuance of what counsel has called the "*status quo*", meaning thereby that their rights of participation in the earnings of the company shall

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continue forever, precisely as they originally were and altogether unaffected. It therefore follows that the charitable contribution statutes assailed by them do not operate to deprive them of any vested property interest. In *Polk* v. *Mutual Reserve Fund L. Asso.*, 207 U. S. 310 (U. S. Sup. 1907), it was said that the same reasoning which leads to the conclusion that "changes in the charter powers, made under the reserved powers of the state, do not violate the contract clause of the Constitution, is apt to show that they do not violate the 14th Amendment."

It is therefore held that the legislation in question is valid as applied to the resolution of the plaintiff's directors, by which action a contribution was granted to Princeton University.

A declaratory judgment as demanded by the plaintiff will be entered and the declaratory judgment demanded by the defendants will be denied.

APPENDIX "C"

SUPREME COURT OF NEW JERSEY

No. A-160, September Term, 1952

THE A. P. SMITH MANUFACTURING COMPANY,
Plaintiff-Respondent,

vs.

RUTH F. BARLOW, WILLIAM B. CAMPBELL, WILLIAM M. BRENN, EUGENE M. SMITH and JOSEPH P. HALPIN, individually and as representatives of the holders of the preferred and common shares of The A. P. Smith Manufacturing Company, *Defendants-Appellants,*

and

THEODORE D. PARSONS, Attorney General of New Jersey,
Defendant-Respondent

OPINION—Argued June 8, 1953; decided June 25, 1953

Mr. Josiah Stryker argued the cause for defendants-appellants, (Messrs. Stryker, Tams & Horner, Attorneys).

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Mr. Waldron M. Ward argued the cause for plaintiff-respondent (Messrs. Pitney, Hardin & Ward, Attorneys; Mr. Robert P. Weil of the New York Bar, of Counsel).

Mr. Theodore D. Parsons, Attorney General, argued the cause for the State of New Jersey (Mr. Thomas P. Cook, Deputy Attorney General, on the brief).

Messrs. Jackson, Nash, Brophy, Barringer & Brooks (Mr. Williamson Pell, Jr., of counsel) of the New York Bar, Attorneys for Princeton University, amicus curiae.

The opinion of the Court was delivered by JACOBS, J.

The Chancery Division, in a well reasoned opinion by Judge Stein, determined that a donation by the plaintiff The A. P. Smith Manufacturing Company to Princeton University was *intra vires*. Because of the public importance of the issues presented, the appeal duly taken to the Appellate Division has been certified directly to this Court under Rule 1:5-1(a).

The Company was incorporated in 1896 and is engaged in the manufacture and sale of valves, fire hydrants and special equipment, mainly for water and gas industries. Its plant is located in East Orange and Bloomfield and it has approximately three hundred employees. Over the years the Company has contributed regularly to the local community chest and on occasions to Upsala College in East Orange and Newark University, now part of Rutgers, the State University. On July 24, 1951 the board of directors adopted a resolution which set forth that it was in the corporation's best interests to join with others in the 1951 Annual Giving to Princeton University and appropriated the sum of $1,500 to be transferred by the corporation's treasurer to the University as a contribution towards its maintenance. When this action was questioned by stockholders the corporation instituted a declaratory judgment action in the Chancery Division and trial was had in due course.

Mr. Hubert F. O'Brien, the president of the company, testified that he considered the contribution to be a sound investment, that the public expects corporations to aid philanthropic and benevolent institutions, that they obtain good will in the community by so doing, and that their charitable donations create favorable environment for their busi-

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ness operations. In addition he expressed the thought that in contributing to liberal arts institutions, corporations were furthering their self-interest in assuring the free flow of properly trained personnel for administrative and other corporate employment. Mr. Frank W. Abrams, chairman of the board of the Standard Oil Company of New Jersey, testified that corporations are expected to acknowledge their public responsibilities in support of the essential elements of our free enterprise system. He indicated that it was not "good business" to disappoint "this reasonable and justified public expectation" nor was it good business for corporations "to take substantial benefits from their membership in the economic community while avoiding the normally accepted obligations of citizenship in the social community." Mr. Irving S. Olds, former chairman of the board of the United States Steel Corporation, pointed out that corporations have a self-interest in the maintenance of liberal education as the bulwark of good government. He stated that "Capitalism and free enterprise owe their survival in no small degree to the existence of our private, independent universities" and that if American business does not aid in their maintenance it is not "properly protecting the long-range interest of its stockholders, its employees and its customers." Similarly, Dr. Harold W. Dodds, President of Princeton University, suggested that if private institutions of higher learning were replaced by governmental institutions our society would be vastly different and private enterprise in other fields would fade out rather promptly. Further on he stated that "democratic society will not long endure if it does not nourish within itself strong centers of non-governmental fountains of knowledge, opinions of all sorts not governmentally or politically originated. If the time comes when all these centers are absorbed into government, then freedom as we know it, I submit, is at an end."

The objecting stockholders have not disputed any of the foregoing testimony nor the showing of great need by Princeton and other private institutions of higher learning and the important public service being rendered by them for democratic government and industry alike. Similarly, they

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have acknowledged that for over two decades there has been state legislation on our books which expresses a strong public policy in favor of corporate contributions such as that being questioned by them. Nevertheless, they have taken the position that (1) the plaintiff's certificate of incorporation does not expressly authorize the contribution and under common law principles the Company does not possess any implied or incidental power to make it and (2) the New Jersey statutes which expressly authorize the contribution may not constitutionally be applied to the plaintiff, a corporation created long before their enactment. See R. S. 14:3-13; R. S. 14:3-13.1, *et seq.*

In his discussion of the early history of business corporations Professor Williston refers to a 1702 publication where the author stated flatly that "The general intent and end of all civil incorporations is for better government." And he points out that the early corporate charters, particularly their recitals, furnish additional support for the notion that the corporate object was the public one of managing and ordering the trade as well as the private one of profit for the members. See 3 *Select Essays on Anglo-American Legal History* 201 (1909); 1 Fletcher, *Corporations*, 6 (Rev. ed. 1931). See also *Currie's Administrators* v. *The Mutual Assurance Society*, 4 Hen. & M. 315, 347 (Va. 1809) where Judge Roane referred to the English corporate charters and expressed the view that acts of incorporation ought never to be passed "but in consideration of services to be rendered to the public." However, with later economic and social developments and the free availability of the corporate device for all trades, the end of private profit became generally accepted as the controlling one in all businesses other than those classed broadly as public utilities. *Cf.* Dodd, *For Whom Are Corporate Managers Trustees?*, 45 Harv. L. Rev. 1145, 1148 (1932). As a concomitant the common law rule developed that those who managed the corporation could not disburse any corporate funds for philanthropic or other worthy public cause unless the expenditure would benefit the corporation. *Hutton* v. *West Cork Railway Company*, 23 Ch. D. 654 (1883); *Dodge* v. *Ford Motor Co.*, 204 Mich. 459, 170 N. W. 668 (1919). Ballantine, *Corporations*, 228 (Rev.

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ed. 1946); 6A Fletcher, *supra*, 667. During the nineteenth century when corporations were relatively few and small and did not dominate the country's wealth, the common law rule did not significantly interfere with the public interest. But the twentieth century has presented a different climate. Berle and Means, *The Modern Corporation and Private Property* (1948). Control of economic wealth has passed largely from individual entrepreneurs to dominating corporations and calls upon the corporations for reasonable philanthropic donations have come to be made with increased public support. In many instances such contributions have been sustained by the courts within the common law doctrine upon liberal findings that the donations tended reasonably to promote the corporate objectives. See Consens, *How Far Corporations May Contribute to Charity*, 35 Va. L. Rev. 401 (1949).

Thus, in the leading case of *Evans* v. *Brunner, Mond & Company, Ltd.* [1921] 1 Ch. 359 the Court held that it was within the incidental power of a chemical company to grant £100,000 to universities or other scientific institutions selected by the directors "for the furtherance of scientific education and research." The testimony indicated that the company desired to encourage and assist men who would devote their time and abilities to scientific study and research generally, a class of men for whom the company was constantly on the lookout. This benefit was not considered by the Court to be so remote as to bring it outside the common law rule. Similarly, in *Armstrong Cork Co.* v. *H. A. Meldrum Co.*, 285 Fed. 58 (W. D. N. Y., 1922) the Court sustained contributions made by the corporation to the University of Buffalo and Canisius College. In the course of its opinion the Court quoted the familiar comment from *Steinway* v. *Steinway & Sons*, 17 Misc. 43, 40 N. Y. Supp. 718 (1896) to the effect that as industrial conditions change business methods must change with them and acts become permissible which theretofore were considered beyond the corporate powers; and on the issue as to whether the corporation had received any corporate benefit it said:

> "It was also considered, in making the subscriptions or donations, that the company would receive advertise-

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ment of substantial value, including the good will of many influential citizens and of its patrons, who were interested in the success of the development of these branches of education, and, on the other hand, suffer a loss of prestige if the contributions were not made, in view of the fact that business competitors had donated and shown a commendable public spirit in that relation. In the circumstances the rule of law that may fairly be applied is that the action of the officers of the company was not ultra vires, but was in fact within their corporate powers, since it tended to promote the welfare of the business in which the corporation was engaged."

In *American Rolling Mill Co.* v. *Commissioner of Internal Revenue*, 41 F. 2d 314 (6th Cir. 1930) the corporation had joined with other local industries in the creation of a civic improvement fund to be distributed amongst community enterprises including the Boy Scouts and Girl Scouts, the YMCA, the Hospital, etc. The Court readily sustained the contribution as an ordinary and necessary expense of the business within the Revenue Act. And in *Greene County Nat. Farm Loan Ass'n* v. *Federal Land Bank of Louisville*, 57 F. Supp. 783, 789 (W.D. Ky. 1944) the Court in dealing with a comparable problem said:

"But it is equally well established that corporations are permitted to make substantial contributions which have the outward form of gifts where the activity being promoted by the so-called gift tends reasonably to promote the goodwill of the business of the contributing corporation. Courts recognize in such cases that although there is no dollar and cent supporting consideration, yet there is often substantial indirect benefit accruing to the corporation which supports such action. So-called contributions by corporations to churches, schools, hospitals, and civic improvement funds, and the establishment of bonus and pension plans with the payment of large sums flowing therefrom have been upheld many times as reasonable business expenditures rather than being classified as charitable gifts. American Rolling Mill Co. *v.* Commissioner of Internal Revenue, 6

Cir., 41 F. 2d 314; Heinz *v.* National Bank of Commerce, 8 Cir., 237 F. 942; Corning Glass Works *v.* Lucas, 59 App. D. C. 168, 37 F. 2d 798, 68 A.L.R. 736; Forbes Lithograph Mfg. Co. *v.* White, D. C. Mass., 42 F. 2d 287; American National Assurance Co. *v.* Ricketts, 230 Ky. 398, 19 S. W. 2d 1071."

The foregoing authorities illustrate how courts, while adhering to the terms of the common law rule, have applied it very broadly to enable worthy corporate donations with indirect benefits to the corporations. In *State* v. *Chicago B. & Q. R. Co.*, 112 Neb. 248, 199 N. W. 534, 537 (1924) the Supreme Court of Nebraska, through Justice Letton, went even further and without referring to any limitation based on economic benefits to the corporation said that it saw "no reason why if a railroad company desires to foster, encourage and contribute to a charitable enterprise, or to one designed for the public weal and welfare, it may not do so"; later in its opinion it repeated this view with the expression that it saw "no reason why a railroad corporation may not, to a reasonable extent, donate funds or services to aid in public works." Similarly the Court in *Carey* v. *Corporation Commission of Oklahoma*, 168 Okla. 487, 33 F. 2d 788, 794 (1934), while holding that a public service company was not entitled to an increase in its rates because of its reasonable charitable donations, broadly recognized that corporations like individuals have power to make them. *Cf. New Jersey Bell Telephone Company* v. *Department of Public Utilities*, N.J. (1953). In the course of his opinion for the Court in the *Carey* case Justice Bayless said:

> "Next is the question of dues, donations, and philanthropies of the Company. It is a matter for the discretion of corporate management in making donations and paying dues. In that respect, a corporation does not occupy a status far different from an individual. An individual determines the propriety of joining organizations, and contributing to their support by paying dues, and all contribution to public charities, etc., according to his means. He does not make such contribution above his means with the hope that his em-

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ployer will increase his compensation accordingly. A corporation likewise should not do so. Its ultimate purpose, from its own standpoint, is to earn and pay dividends. If, as a matter of judgment, it desires to take part of its earnings, just as would an individual, and contribute them to a worthy public cause, it may do so; but we do not feel that it should be allowed to increase its earnings to take care thereof."

Over twenty years ago Professor Dodd, supra, 45 Harv. L. Rev. at 1159, 1160, cited the views of Justice Letton in *State v. Chicago B. & Q. R. Co., supra,* with seeming approval and suggested the doctrine that corporations may properly support charities which are important to the welfare of the communities where they do business as soundly representative of the public attitude and actual corporate practice. Developments since he wrote leave no doubts on this score.

When the wealth of the nation was primarily in the hands of individuals they discharged their responsibilities as citizens by donating freely for charitable purposes. With the transfer of most of the wealth to corporate hands and the imposition of heavy burdens of individual taxation, they have been unable to keep pace with increased philanthropic needs. They have therefore, with justification, turned to corporations to assume the modern obligations of good citizenship in the same manner as humans do. Congress and State legislatures have enacted laws which encourage corporate contributions and much has recently been written to indicate the crying need and adequate legal basis therefor. See Ruml, *The Manual of Corporate Giving,* 3, 35 (1952); Garrett, *Corporate Donations to Charity,* 4 The Business Lawyer 28 (1948); 8 The Business Lawyer 22 (1953); Bell, *Corporate Support of Education,* 38 A. B. A. J. 119 (1952); de Capriles and Garrett, *Legality of Corporate Support to Education,* 38 A. B. A. J. 209 (1952); Bleicken, *Corporate Contributions to Charity,* 38 A. B. A. J. 999 (1952); Andrews, *Corporation Giving,* 15, 158, 201 (1952). *Cf.* Navarro, *Corporate Authority to Contribute to Charity,* 26 Phil. L. J. 187 (1951); Stevens, *Corporations,* 252 (2d ed. 1949). In actual practice corporate giving has

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correspondingly increased. Thus it is estimated that annual corporate contributions throughout the nation aggregate over 300 million dollars with over 60 million dollars thereof going to universities and other educational institutions. Similarly it is estimated that local community chests receive well over 40% of their contributions from corporations; these contributions and those made by corporations to the American Red Cross, to Boy Scouts and Girl Scouts, to 4-H Clubs and similar organizations have almost invariably been unquestioned.

During the first world war corporations loaned their personnel and contributed substantial corporate funds in order to insure survival; during the depression of the thirties they made contributions to alleviate the desperate hardships of the millions of unemployed; and during the second world war they again contributed to insure survival. They now recognize that we are faced with other, though nonetheless vicious, threats from abroad which must be withstood without impairing the vigor of our democratic institutions at home and that otherwise victory will be pyrrhic indeed. More and more they have come to recognize that their salvation rests upon sound economic and social environment which in turn rests in no insignificant part upon free and vigorous non-governmental institutions of learning. It seems to us that just as the conditions prevailing when corporations were originally created required that they serve public as well as private interests, modern conditions require that corporations acknowledge and discharge social as well as private responsibilities as members of the communities within which they operate. Within this broad concept there is no difficulty in sustaining, as incidental to their proper objects and in aid of the public welfare, the power of corporations to contribute corporate funds within reasonable limits in support of academic institutions. But even if we confine ourselves to the terms of the common law rule in its application to current conditions, such expenditures may likewise readily be justified as being for the benefit of the corporation; indeed, if need be the matter may be viewed strictly in terms of actual survival of the corporation in a free enterprise system. The genius of our common

law has been its capacity for growth and its adaptability to the needs of the times. Generally courts have accomplished the desired result indirectly through the molding of old forms. Occasionally they have done it directly through frank rejection of the old and recognition of the new. But whichever path the common law has taken it has not been found wanting as the proper tool for the advancement of the general good. *Cf.* Holmes, *The Common Law*, 1, 5 (1951): Cardozo, *Paradoxes of Legal Science*. Hall, Selected Writings, 253 (1947).

In 1930 a statute was enacted in our State which expressly provided that any corporation could co-operate with other corporations and natural persons in the creation and maintenance of community funds and charitable, philanthropic or benevolent instrumentalities conducive to public welfare and could for such purposes expend such corporate sums as the directors "deem expedient and as in their judgment will contribute to the protection of the corporate interests." L. 1930, c. 105; L. 1931, c. 290; R. S. 14:3-13. See 53 N. J. L. J. 335 (1930). Under the terms of the statute donations in excess of 1% of the capital stock required 10 days' notice to stockholders and approval at a stockholders' meeting if written objections were made by the holders of more than 25% of the stock; in 1949 the statute was amended to increase the limitation to 1% of capital and surplus. See L. 1949, c. 171. In 1950 a more comprehensive statute was enacted. L. 1950, c. 220; R. S. 14:3-13.1 *et seq.* In this enactment the legislature declared that it shall be the public policy of our State and in furtherance of the public interest and welfare that encouragement be given to the creation and maintenance of institutions engaged in community fund, hospital, charitable, philanthropic, educational, scientific or benevolent activities or patriotic or civic activities conducive to the betterment of social and economic conditions; and it expressly empowered corporations acting singly or with others to contribute reasonable sums to such institutions provided, however, that the contribution shall not be permissible if the donee institution owns more than 10% of the voting stock of the donor and provided, further, that the contributions shall not exceed 1% of capital and surplus

unless the excess is authorized by the stockholders at a regular or special meeting. To insure that the grant of express power in the 1950 statute would not displace pre-existing power at common law or otherwise, the legislature provided that the "act shall not be construed as directly or indirectly minimizing or interpreting the rights and powers of corporations, as heretofore existing, with reference to appropriations, expenditures or contributions of the nature above specified." R. S. 14:3-13.3. It may be noted that statutes relating to charitable contributions by corporations have now been passed in 29 states. See Andrews, *supra*, 235.

The appellants contend that the foregoing New Jersey statutes may not be applied to corporations created before their passage. Fifty years before the incorporation of The A. P. Smith Manufacturing Company our legislature provided that every corporate charter thereafter granted "shall be subject to alteration, suspension and repeal, in the discretion of the legislature." L. 1846, p. 16; R. S. 14:2-9. A similar reserved power was placed into our state constitution in 1875 (Art. 4, Sec. 7, par. 11) and is found in our present constitution. Art. 4, Sec. 7, par. 9. In the early case of *Zabriskie* v. *The Hackensack and New York Railroad Company*, 18 N. J. Eq. 178 (Ch. 1867) the Court was called upon to determine whether a railroad could extend its line, above objection by a stockholder, under a legislative enactment passed under the reserve power after the incorporation of the railroad. Notwithstanding the breadth of the statutory language and persuasive authority elsewhere (*Durfee* v. *Old Colony & Fall River Railroad Company*, 87 Mass. 230 (1862)) it was held that the proposed extension of the company's line constituted a vital change of its corporate object which could not be accomplished without unanimous consent. See Lattin, *A Primer on Fundamental Corporate Changes*, 1 West. Res. L. Rev. 3, 7 (1949). The Court announced the now familiar New Jersey doctrine that although the reserved power permits alterations in the public interest of the contract between the state and the corporation, it has no effect on the contractual rights between the corporation and its stockholders and between stockholders *inter se*. Unfortunately the Court did

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not consider whether it was not contrary to the public interest to permit the single minority stockholder before it to restrain the railroad's normal corporate growth and development as authorized by the legislature and approved, reasonably and in good faith, by the corporation's managing directors and majority stockholders. Although the later cases in New Jersey have not disavowed the doctrine of the *Zabriskie* case it is noteworthy that they have repeatedly recognized that where justified by the advancement of the public interest the reserved power may be invoked to sustain later charter alterations even though they affect contractual rights between the corporation and its stockholders and between stockholders *inter se*. See *Berger* v. *United States Steel Corporation*, 63 N. J. Eq. 809, 824 (E. & A., 1902); *Murray* v. *Beattie Manufacturing Co.*, 79 N. J. Eq. 604, 609 (E. & A., 1912); *Grausman* v. *Porto Rican-American Tobacco Co.*, 95 N. J. Eq. 155 (Ch. 1923) aff'd. on other ground 95 N. J. Eq. 223 (E. & A., 1923); *Bingham* v. *Savings Investment & Trust Co.*, 101 N. J. Eq. 413, 415 (Ch. 1927) aff'd. 102 N. J. Eq. 302 (E. & A., 1928); *Re Collins-Doan Co.*, 3 N. J. 382, 391 (1949). *Cf. State* v. *Miller*, 30 N. J. L. 368, 373 (Sup. Ct., 1863) aff'd. 31, N. J. L. 521 (E. & A., 1864); *Montclair* v. *New York & Greenwood Lake Railway Co.*, 45 N. J. Eq. 436, 444 (Ch., 1889) rev'd. on other grounds 47 N. J. Eq. 591 (E. & A., 1890); *Moore* v. *Conover*, 123 N. J. Eq. 61, 74 (Ch., 1937).

Thus in the *Berger* case the Court of Errors and Appeals sustained the applicability under the reserved power of provisions relating to corporate borrowing and the purchase of corporate stock and in considering the doctrine of the *Zabriskie* case noted that the rights of the stockholders *inter se* may not be impaired "except in so far as impairment may result from an alteration required by the public interest." And later in its opinion the Court, referring to the provision in the Corporation Act of 1896 that the act and all amendments shall be a part of the charter of every corporation formed theretofore or thereafter, said "It is difficult to perceive how any substantial force can be accorded to it, unless some amendment may be made which may affect the rights of stockholders *inter sese* to some

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extent." In the *Murray* case the Court sustained a statute substituting a discretionary power to pay dividends for a pre-existing duty; in the course of his opinion Justice Swayze indicated that even apart from stockholders' consent the statutory alteration could be sustained since it was "a matter of state concern that a corporation should be permitted to accumulate a sufficient fund to secure its credit and make permanent its successful operation." And in the *Bingham* case the Court sustained a bank merger under the authority of legislation enacted after the incorporation of the bank, with Vice Chancellor Backes pointing out that the office of the reserve power in our organic and statutory law "is to safeguard the public interests in corporate grants."

This Court had recent occasion to deal with the problem in *Re Collins-Doan Co., supra.* There it appeared that the board of directors was hopelessly deadlocked and application was duly made under L. 1938, c. 303 (R. S. 14.13-15) by the plaintiffs, representing half the directors and stockholders, for dissolution of the corporation. The defendants representing the other half resisted the application, contending that since the corporation was formed in 1916 it could not be dissolved except with the consent of two-thirds of the stockholders. This Court, while recognizing that the later enactment did affect the rights between the corporation and its stockholders and between the stockholders *inter se* nevertheless held that it was applicable to the pre-existing corporation as a proper exercise of the reserved power. In the course of his opinion for the Court Justice Heher pionted out that "the contractual rights of the stockholders *inter se* are not proof against 'alteration required by the public interest'." It may be noted that the later enactment not only affected the relations between the corporation and stockholders and the stockholders *inter se* but also enabled complete termination of the original corporate objectives; yet this Court found little difficulty in subordinating these considerations to the paramount public interest in avoiding the indefinite continuance of a corporation which could not function with propriety because of the "stalemate in corporate management." See *In re Evening Journal Association*, 1 N. J. 437, 444 (1948). The legislative function recog-

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nized here may be considered somewhat akin to that under the police power generally where private interests frequently are called upon to give way to the paramount public interest. See *Reingold* v. *Harper*, 6 N. J. 182, 193 (1951); *McSweeney* v. *Equitable Trust Co.*, 16 N. J. Misc. 193, 197 (Sup. Ct. 1938) aff'd. 127 N. J. L. 299 (E. & A. 1941) app. dism. 315 U. S. 785, 86 L. ed. 1191 (1942); *Union Dry Goods Company* v. *Georgia Public Service Corporation*, 248 U. S. 372, 63 L. ed. 309 (1919). See also *Lakewood Express Service, Inc.* v. *Board of Public Utility Commissioners*, 1 N. J. 45, 50 (1948) where Justice Oliphant in discussing the police power said:

> "This power extends to all great public needs and the constitutional interdictions as to due process and the protection of property rights does not prevent a state from exercising such powers as are vested in it for the promotion of the common weal or are necessary for the general good of the public even though property or contract rights are affected. *Manigualt* v. *Springs*, 199 U. S. 473, 50 L. Ed. 274, 26 S. Ct. 127; *Home B. & L. Assn.* v. *Blaisdell*, 290 U. S. 398, 78 L. Ed. 415, 54 S. Ct. 231; *Veix* v. *Sixth Ward B. & L. Assn. of Newark, N. J.*, 310 U. S. 32, 84 L. Ed. 1061, 60 S. Ct. 792; *Bucsi* v. *Longworth B. & L. Assn.*, 119 N. J. L. 120, 123 (E. & A. 1937)."

State legislation adopted in the public interest and applied to pre-existing corporations under the reserved power has repeatedly been sustained by the United States Supreme Court above the contention that it impairs the rights of stockholders and violates constitutional guarantees under the Federal Constitution. Thus in *Looker* v. *Maynard*, 179 U. S. 46, 45 L. ed. 79 (1900) the Court sustained the application to pre-existing corporations of later legislation designed to secure minority representation on boards of directors by permitting cumulative voting by stockholders; in *Polk* v. *Mutual Reserve Fund Life Association of New York*, 207 U. S. 310, 52 L. ed. 222 (1907) the Court sustained state legislation which permitted reorganizations of existing corporations involving changes in their corporate purposes; in

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Veix v. *Sixth Ward Bldg. & Loan Association of Newark*, 310 U. S. 32, 84 L. ed. 1061 (1940), a New Jersey statute which altered the withdrawal rights of building and loan shareholders was upheld: and in *Sutton* v. *New Jersey*, 244 U. S. 258, 61 L. ed. 1117 (1917), a New Jersey statute which required pre-existing street railway corporations to carry police officers without charge was upheld as a proper exercise of the reserve power. Many other instances which sustain legislative enactments adopted in the public interest but affecting the relations between the corporation and its stockholders and between stockholders *inter se* as well as the contract between the state and the corporation may be found cited in the opinion below and in Ballantine, *supra*, p. 648; 7 Fletcher, *supra*, p. 815; 54 Harv. L. Rev. 1368 (1941); 13 Am. Jur. 233 (1938); 16 C. J. S. 759 (1939). We are entirely satisfied that within the orbit of above authorities the legislative enactments found in R. S. 14:3-13 and R. S. 14:3-13-1 *et seq.* and applied to pre-existing corporations do not violate any constitutional guarantees afforded to their stockholders.

It seems clear to us that the public policy supporting the statutory enactments under consideration is far greater and the alteration of preexisting rights of stockholders much lesser than in the cited cases sustaining various exercises of the reserve power. In encouraging and expressly authorizing reasonable charitable contributions by corporations, our State has not only joined with other States in advancing the national interest but has also specially furthered the interests of its own people who must bear the burdens of taxation resulting from increased State and Federal aid upon default in voluntary giving. It is significant that in its enactments the State has not in anywise sought to impose any compulsory obligations or alter the corporate objectives. And since in our view the corporate power to make reasonable charitable contributions exists under modern conditions, even apart from express statutory provision, its enactments simply constitute helpful and confirmatory declarations of such power, accompanied by limiting safeguards.

In the light of all of the foregoing we have no hesitancy in sustaining the validity of the donation by the plaintiff. There is no suggestion that it was made indiscriminately or to a pet charity of the corporate directors in furtherance of personal rather than corporate ends. On the contrary, it was made to a pre-eminent institution of higher learning, was modest in amount and well within the limitations imposed by the statutory enactments, and was voluntarily made in the reasonable belief that it would aid the public welfare and advance the interests of the plaintiff as a private corporation and as part of the community in which it operates. We find that it was a lawful exercise of the corporation's implied and incidental powers under common law principles and that it came within the express authority of the pertinent State legislation. As has been indicated, there is now widespread belief throughout the nation that free and vigorous nongovernmental institutions of learning are vital to our democracy and the system of free enterprise and that withdrawal of corporate authority to make such contributions within reasonable limits would seriously threaten their continuance. Corporations have come to recognize this and with their enlightenment have sought in varying measures, as has the plaintiff by its contribution, to insure and strengthen the society which gives them existence and the means of aiding themselves and their fellow citizens. Clearly then, the appellants, as individual stockholders whose private interests rest entirely upon the well being of the plaintiff corporation, ought not be permitted to close their eyes to present-day realities and thwart the long-visioned corporate action in recognizing and voluntarily discharging its high obligations as a constituent of our modern social structure.

The judgment entered in the Chancery Division is in all respects

Affirmed.

OCTOBER 26, 1953.

Per Curiam Decisions.

No. 383. BARLOW ET AL. *v.* A. P. SMITH MANUFACTURING CO. ET AL. Appeal from the Supreme Court of New Jersey. *Per Curiam:* The appeal is dismissed for the want of a substantial federal question. *Adolf A. Berle, Jr.* for appellants. *Theodore D. Parsons,* Attorney General of New Jersey, and *Thomas P. Cook,* Deputy Attorney General, for Parsons, appellee. Reported below: 13 N. J. 145, 98 A. 2d 581.

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